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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DERRYL TYRONE FOSTER,
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13 vs. Petitioner,
14 MATTHEW CATE, Secretary, California
15 Department of Corrections and
16 Rehabilitation,
Respondent.

CASE NO. 11-cv-2270-LAB (WMc)
**ORDER ADOPTING REPORT
AND RECOMMENDATION**

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18 Foster filed a habeas petition on September 28, 2011, and a first amended petition
19 on July 5, 2012. Pursuant to 28 U.S.C. § 636(b) and Civil Local Rules 72.1(c) and (d) it was
20 referred to Magistrate Judge McCurine for a Report and Recommendation. Now before the
21 Court is Respondent's motion to dismiss. He argues that the petition is barred by AEDPA's
22 one-year state of limitations.

23 Judge McCurine issued an R&R on May 10, 2013 agreeing with Respondent, which
24 the Court must now review. "The district judge must determine de novo any part of the
25 magistrate judge's disposition that has been properly objected to. The district court may
26 accept, reject, or modify the recommended disposition; receive further evidence; or return
27 the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3). *See also* 28
28 U.S.C. § 636(b). If no objection is made, however, this de novo determination isn't required.

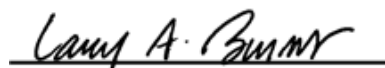
1 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Because
2 Foster is a prisoner and is proceeding pro se, the Court construes his pleadings liberally and
3 affords him the benefit of any doubt. See *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621,
4 623 (9th Cir. 1988). That said, "[p]ro se litigants must follow the same rules of procedure
5 that govern other litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

6 Judge McCurine's R&R couldn't be more thorough. It details to the day the rather
7 complex history of Foster's habeas petitions in state court, and it even includes a very useful
8 timeline that shows exactly where the clock was ticking on Foster's right to seek federal
9 habeas relief. (R&R at 12.) It explains where (and why) Foster is entitled to statutory tolling,
10 but also where (and why) he isn't. (R&R at 13–15.) It addresses head-on (and rejects)
11 Foster's claim that ineffective assistance of counsel, limited time and resources in prison to
12 do legal work, and his own diminished capacity entitle him to equitable tolling. (R&R at
13 15–17.) The Court has carefully reviewed Foster's objection to the R&R and finds that it is
14 hardly an objection at all. Rather than take issue with R&R's detailed analysis, Foster more
15 or less recycles the same conclusory arguments from his underlying opposition to
16 Respondent's motion to dismiss. He simply has no specific rebuttal to the substance of the
17 R&R for the Court to even consider.

18 The Court finds Judge McCurine's R&R to be well-reasoned and correct. It is
19 therefore **ADOPTED**, and Respondent's motion to dismiss Foster's habeas petition is
20 **GRANTED**. The Court also **DENIES** Foster a certificate of appealability. See *Lambright v.*
21 *Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000).

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23 **IT IS SO ORDERED.**

24 DATED: August 23, 2013

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26 **HONORABLE LARRY ALAN BURNS**
27 United States District Judge
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